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No. 10-92

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CHRISTINE SAHYERS,

Petitioner,

v.

PRUGH, HOLLIDAY, & KARATINOS, P.L.,
A Florida Limited Liability Corporation,
TIMOTHY PRUGH, JAMES W. HOLLIDAY, II,
and THEODORE E. KARATINOS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

THOMAS M. GONZALEZ
Counsel of Record
THOMPSON, SIZEMORE, GONZALEZ,
& HEARING, P.A.
201 North Franklin Street,
Suite 1600
Tampa, Florida 33602
(813) 273-0050
tgonzalez@tsghlaw.com

Counsel for Respondents

232204

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the trial court had authority to deny attorney's fees and costs to the plaintiff in an action for unpaid wages under the Fair Labor Standards Act based on the manner in which the plaintiff litigated the claim in the context of the facts of this case.

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STATEMENT OF THE CASE

Christine Sahyers ("Sahyers") worked as a paralegal for the law firm of Prugh, Holliday, & Karatinos, P.A. and the law firm's attorneys, Timothy Prugh, James Holliday, and Theodore Karatinos (collectively, "Respondents"). At the time of her employment, Sahyers was a law school graduate, but not yet a member of The Florida Bar. She recorded her time on a time clock, which showed the hours for which she was paid. Sahyers was allowed to conduct personal business during work hours, including real estate transactions and litigation matters pending in her former state of residence. She also was allowed to study for The Florida Bar Examination in the law firm's office after hours. None of the law firm's attorneys were aware that Sahyers had worked any overtime hours for which she was not paid.

On January 9, 2007, Sahyers filed a lawsuit against the Respondents for alleged violations of the overtime provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* In the complaint, Sahyers alleged that she did not receive compensation for hours worked in excess of forty hours per workweek. Prior to filing the lawsuit, neither Sahyers nor her attorney made any demands for payment or attempted to collect any sums allegedly owed to Sahyers. Rather, Sahyers' attorney followed Sahyers' instructions to file the lawsuit before making any demands for payment.

The Respondents answered Sahyers' complaint and asserted affirmative defenses. The Respondents denied that they owed Sahyers any compensation for overtime hours. The parties' counsel engaged in several telephone conversations wherein Sahyers' attorney made demands for sums in the range of $25,000 to $35,000, but provided no statement of the actual amounts allegedly owed.

The parties then engaged in discovery, including interrogatories, requests for production, and the depositions of two of the law firm's attorneys. In their interrogatories to Sahyers, the Respondents asked, "Please state each item of damage that you claim, and include in your answer the count to which the item of damages relates, the factual basis for each such item of damages, and an explanation of how you computed each item of damages, including any mathematical formula used." No such statement of damages was provided. Rather, Sahyers responded, "Plaintiff objects to this interrogatory as a determination of the damages are a matter to be determined by the jury. Notwithstanding said objection and without waiving same, Plaintiff states as follows: Plaintiff seeks overtime compensation, liquidated damages, post-judgment interest and attorney's fees, and costs from Defendants." The Respondents also asked, "Identify each and every instance in which you claim that you and/or similarly situated employees worked in excess of 40 hours in a workweek, but the Defendants did not compensate you for the overtime at a rate not less than one and one-half times your regular rate." Again, Sahyers stated an objection to the question and responded, "Plaintiff

states . . . [that] Defendant Jim Holliday was my immediate supervisor and required my time in excess of 40 hours a week."

The parties also participated in mediation, which ended in impasse. Sahyers' attorney did not divulge any details regarding the extent of Sahyers' damages until the mediation. He also attempted to seek additional damages from the Respondents on the basis that Sahyers was contemplating filing an additional claim under the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k). Notably, Sahyers never pursued such a claim.

Five days after the mediation, the Respondents, pursuant to Rule 68 of the Federal Rules of Civil Procedure, tendered an offer of judgment to Sahyers for $3,500 for alleged unpaid wages and liquidated damages. The offer of judgment stated that the Respondents agreed to pay any amount of costs and attorney's fees, if any, to which the district court determined that Sahyers was entitled. The offer of judgment also contained a non-liability provision which stated that, "This Offer does not in any way act as an admission of liability or wrongdoing on the part of the Defendants. Likewise, the Plaintiff's acceptance of this Offer does not in any way act as an admission of liability or wrongdoing on the part of the Defendants." Sahyers accepted the offer of judgment, and the district court entered judgment for Sahyers and against the Respondents on October 9, 2007.

Sahyers then moved to tax $13,800 in attorney's fees against the Respondents. This amount included fees

for forty-one hours of work at $300 per hour. Such work included conferring with his client, receiving and reviewing correspondence from his client, drafting the complaint, reviewing and revising the Case Management Report, drafting and reviewing discovery, researching legal issues, and preparing for and attending depositions. Sahyers also moved to tax $1,840.70 in costs against the Respondents, including filing fees, fees for service of process, copy fees, court reporter fees, mediation fees, and fees associated with the preparation of a fee expert's affidavit.

After hearing oral arguments from the parties' counsel, the district court denied Sahyers' motion on February 1, 2008 and refused to award her any attorney's fees or costs. In its order, the district court noted that:

> . . . the FLSA provides for a mandatory award of reasonable attorney's fees. Nevertheless, there are "special circumstances" that can render such an award of attorney's fees unjust. So called nuisance settlements represent such a circumstance. Put another way, there are some cases in which a reasonable fee is no fee. Upon hearing oral argument of the parties, the Court concludes that this case is such a circumstance. At no time prior to filing this lawsuit did Plaintiff make a written demand to Defendants for payment of the overtime compensation she now seeks. Furthermore, Plaintiff's attorney did not send Defendants a pre-suit demand letter prior to filing this lawsuit. This Court

> is not ruling that a pre-suit letter is always required, but in this case, the Plaintiff's lawyer did not even make a phone call to try to resolve the issue before filing suit. The Defendant is a law firm. Prior to filing suit in this local area, it is still reasonable to pick up the phone and call another lawyer so it won't be necessary to file suit. The defense proffered by Plaintiff's lawyer for not doing so is that his client instructed him to file suit first and ask questions later. . . . [T]he Court concludes that it would be unreasonable and unjust to force Defendants to pay any of Plaintiff's attorney's fees. This Court refuses to reward unnecessary litigation. For the same reason, the Court also denies Plaintiff's request for reasonable costs and/or expenses.

Sahyers appealed the district court's order to the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit").

On March 3, 2009, the Eleventh Circuit denied Sahyers' appeal and affirmed the district court's decision. The opinion stated as follows:

> The district court's inherent powers support its decision here. Defendants are lawyers and their law firm. And the lawyer for Plaintiff made absolutely no effort – no phone call; no email; no letter – to inform them of Plaintiff's impending claim much less to resolve this dispute before filing suit. Plaintiff's lawyer slavishly followed his client's instructions and

> – without a word to Defendants in advance – just sued his fellow lawyers. As the district court saw it, this conscious disregard for lawyer-to-lawyer collegiality and civility caused (among other things) the judiciary to waste significant time and resources on unnecessary litigation and stood in stark contrast to the behavior expected of an officer of the court. The district court refused to award – and thereby to encourage – uncivil conduct by awarding Plaintiff attorney's fees or costs. Given the district court's power of oversight for the bar, we cannot say that this decision was outside of the bounds of the district court's discretion.

The Eleventh Circuit also noted that "the conscious indifference to lawyer-to-lawyer collegiality and civility exhibited by Plaintiff's lawyer (per his client's request) amounted to harassing Defendants' lawyers by causing them unnecessary trouble and expense and satisfied the bad-faith standard." To prevent the decision from being too far reaching, the Eleventh Circuit noted that:

> We strongly caution against inferring too much from our decision today. These kinds of decisions are fact-intensive. We put aside cases in which lawyers are not parties. We do not say that pre-suit notice is usually required or even often required under the FLSA to receive an award of attorney's fees or costs. Nor do we now recommend that courts use their inherent powers to deny prevailing parties attorney's fees or costs. We declare

> no judicial duty. We create no presumptions. We conclude only that the district court did not abuse its discretion in declining to award some attorney's fees and costs based on the facts of this case.

Sahyers moved for rehearing en banc, but her motion was denied.

SUMMARY OF THE ARGUMENT

Sahyers is not entitled to an award of attorney's fees and costs under the FLSA because the specific and unique circumstances of this case render such an award unjust. Sahyers, who was a law school graduate who worked for attorneys, never made any demands on the attorneys for unpaid overtime compensation. There was no indication that any of the attorneys were aware that Sahyers had performed work for which she was not compensated. Prior to filing suit, Sahyers' attorney also never made any demands on the Respondents. Her attorney likely could have resolved Sahyers' claims with a few telephone calls and an accurate estimate of the number of overtime hours for which she was seeking compensation.

Instead, Sahyers' attorney treated this non-complex FLSA case for a relatively small sum of damages as an opportunity to seek a disproportionately large sum of attorney's fees. This conduct should not be rewarded, and as both the Eleventh Circuit and the district court noted, the only "reasonable fee" is no fee.

Contrary to Sahyers' arguments, the Eleventh Circuit's decision does not overstate the extent of federal court inherent authority to discipline attorneys, does not create a pre-suit notice requirement under the FLSA, and does not create a different standard for bringing FLSA claims against attorneys than against non-attorneys. Rather, the Eleventh Circuit's holding was based on, and limited to, the unique facts of this particular case. The outcome would have been the same even if the Respondents were not a law firm and its attorneys.

ARGUMENT

I. The Eleventh Circuit Properly Affirmed The District Court's Denial Of Sahyers' Motion For Attorney's Fees And Costs.

Although the FLSA provides for a mandatory award of reasonable attorney's fees, there can be "special circumstances" under which such an award would be rendered unjust. "Nuisance settlements" constitute one such set of special circumstances. *See Tyler v. Corner Constr. Corp.*, 167 F.3d 1202, 1206 (8th Cir. 1999) (explaining that a nuisance settlement is not just a settlement that is entered into after the usual economic calculation; rather, it is a settlement that is accepted despite the fact that the case against the defendant is frivolous or groundless, solely in an effort to avoid the expense of litigation). In these cases, plaintiffs' attorneys file claims for small dollar amounts under the FLSA wage and hour provisions, purposely drag out litigation, ultimately accept nuisance settlements from

the defendants, and then claim thousands of dollars in attorney's fees.[1] Such circumstances should be considered in determining the amount, if any, of attorney's fees to be awarded to a plaintiff under the FLSA.

Here, Sahyers' attorney treated this straightforward FLSA case, which involved a relatively small sum of damages and no complex legal issues of first impression, as an opportunity to receive a

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1. Although only a district court opinion, *Goss v. Killian Oaks House of Learning* provides an excellent example of a nuisance settlement under the FLSA. 248 F. Supp. 2d 1162 (S.D. Fla. 2003). In *Goss*, the plaintiff sued her former employer for $137.03 in unpaid wages and an unspecified amount of unpaid overtime compensation. The defendant's attorney repeatedly attempted to contact the plaintiff's attorney to ascertain the amount of the claim and to settle the case, but the plaintiff's attorney refused to provide the defendant's attorney with even an estimate of the plaintiff's damages. The plaintiff eventually accepted a "nuisance settlement" of $315.89, and her attorney filed a motion for attorney's fees for the 38.8 hours he claimed he spent litigating the case. The court refused to award the plaintiff's attorney any fees because he had "continuously employed a strategy of delay and obfuscation in his attempt to ward off the inevitable resolution of the case," had "churned" the file to extract as many fees as possible, and had avoided prompt out-of-court resolution that would have kept the costs of the litigation down to a reasonable amount. *Id.* at 1168-69. In its opinion, the court noted that although the FLSA provides for a mandatory award of attorney's fees, "an entitlement to attorney's fees cannot be a *carte blanche* license for Plaintiffs to outrageously and in bad faith run up attorney fees without any threat of sanction. . . . This strategy of 'shaking down' Defendants with nightmarishly expensive litigation solely in pursuit of attorney's fees must not be rewarded." *Id.*

disproportionately large award of attorney's fees. Although Sahyers' claims likely could have been disposed of by making a few telephone calls, her attorney instead chose to file a lawsuit and propound discovery on the Respondents. Although counsel for the Respondents called Sahyers' attorney on several occasions to ascertain the amount of damages sought by Sahyers and to discuss the possibility of settling the case, her attorney would not state the amounts claimed, and instead, simply made demands for settlement which turned out to have no relation to the sum ultimately paid. Sahyers also provided vague and unresponsive answers to the Respondents' interrogatories requesting information about her alleged damages. She never supplemented her interrogatory responses, and her attorney never provided the Respondents with any documents or reports related to Sahyers' alleged damages or any statement of the number of hours she allegedly had worked. Although Sahyers made demands for settlement between $25,000 and $35,000, such demands did not bear any connection to the $3,500 judgment she ultimately accepted, a sum which included liquidated damages. Because Sahyers' attorney did not attempt to resolve this case expeditiously and was not forthcoming regarding the amount of Sahyers' alleged damages, her motion for attorney's fees and costs properly was denied. The only reasonable fee that could be rewarded under the special circumstances of this case was no fee.

II. The Eleventh Circuit's Decision Does Not Overstate The Extent Of A Federal Court's Inherent Authority To Supervise Attorneys Who Practice Before It.

It is well established that federal courts have inherent power to manage their own proceedings and to control the conduct of the attorneys and parties who appear before them. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others") (internal quotations omitted).

Pursuant to this inherent power, federal courts may discipline attorneys who appear before them. *See, e.g., id.*; *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (federal courts have inherent powers to assess attorney's fees against counsel for inappropriate conduct); *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1306 (11th Cir. 2009) (federal courts may impose sanctions on attorneys for litigation misconduct under inherent powers); *In re Finkelstein*, 901 F.2d 1560, 1564 (11th Cir. 1990) (federal courts have power to supervise the professional conduct of lawyers who practice before them and to impose reasonable sanctions for attorney misconduct); *Flaksa v. Little River Marine Constr. Co.*, 389 F.2d 885, 888 (5th Cir. 1968) (federal courts have inherent powers to manage their affairs, and such powers include authority to impose reasonable and appropriate sanctions upon errant lawyers); *Sanders v. Russell*, 401 F.2d 241, 246

(5th Cir. 1968) (federal courts can and should take measures against unethical conduct by attorneys if and when such conduct occurs in connection with proceedings pending before them). However, in invoking this inherent power to discipline attorneys whose conduct abuses the judicial process, federal courts must exercise discretion in fashioning appropriate sanctions. *Chambers*, 501 U.S. at 44; *Degen v. United States*, 517 U.S. 820, 823-24 (1996) ("Principles of deference counsel restraint in resorting to inherent power, and require its use to be a reasonable response to the problems and needs that provoke it").

Thus the Eleventh Circuit's opinion does not overstate the extent of a federal court's inherent authority to discipline attorneys who practice before it. The opinion merely affirms the power of a federal court to supervise the members of its Bar and to promote civility and respect among the attorneys in the area. The district court, in the exercise of its inherent powers to manage attorney conduct, did not act in contravention of the attorney's fee provision of the FLSA. Rather, in deciding the amount of the "reasonable attorney's fee to be paid by the defendant," the district court determined that, under the special circumstances of this case, wherein the plaintiff's attorney filed a lawsuit against a law firm and its lawyers without so much as contacting the lawyers to discuss settlement of the plaintiff's relatively small claim, the only "reasonable" fee would be no fee.

III. The Eleventh Circuit's Decision Does Not Create A "Lawyers-Only Exception" To The FLSA.

Sahyers argues that the Eleventh Circuit's decision creates an inappropriate "lawyers-only exception" to the FLSA by requiring lawyers, but not non-lawyers, to provide pre-suit notice to lawyer defendants prior to filing suit under the FLSA. This argument lacks merit.

Although the Eleventh Circuit considered the failure of Sahyers and her attorney to make demands to the Respondents for payment of overtime compensation prior to filing the lawsuit, the opinion specifically explained that:

> We do not say that pre-suit notice is usually required or even often required under the FLSA to receive an award of attorney's fees or costs. Nor do we now recommend that courts use their inherent powers to deny prevailing parties attorney's fees or costs. We declare no judicial duty. We create no presumptions. We conclude only that the district court did not abuse its discretion in declining to award some attorney's fees and costs based on the facts of this case.

Thus, the Eleventh Circuit's opinion does not create any requirement that a plaintiff provide pre-suit notice to a defendant prior to filing suit under the FLSA. Rather, the opinion provides that *under the specific and unique circumstances of this case* – in which a law school graduate who worked for a law firm did not raise the

issue of unpaid overtime compensation with any of the law firm's attorneys prior to filing suit, and her attorney made no attempt to resolve the case prior to filing suit, did not divulge details regarding the extent of his client's damages until mediation, and attempted to seek additional damages from the Respondents based on his client's alleged claims under the Pregnancy Discrimination Act, which she ultimately never pursued – an award of attorney's fees would be unjust.[2]

Nor does the Eleventh Circuit's decision create different standards for litigation against attorneys than litigation against non-attorneys. The decision, which was highly fact-intensive, provides that under the special circumstances of this case, Sahyers' attorney easily could have contacted the Respondents to inform them of Sahyers' claims and to discuss possible settlement offers prior to filing suit. If Sahyers' attorney had contacted the Respondents and provided them with

2. Like the FLSA, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, does not require a plaintiff to notify a defendant prior to filing suit. However, in determining whether to award attorney's fees and costs in cases brought under the ADA, at least one court has considered whether the plaintiff provided pre-suit notice or made other attempts to settle their claims prior to filing suit. *See Ass'n of Disabled Ams. v. Neptune Designs, Inc.*, 469 F.3d 1357, 1360 (11th Cir. 2006) (although the ADA does not require pre-suit notice, in determining whether an award of attorney's fees is warranted, a district court may consider whether the litigation was frivolous and "whether the plaintiff's failure to ask for or to accept voluntary compliance prior to suit indicates that the plaintiff has acted in bad faith, has been unduly litigious, or has caused unnecessary trouble and expense").

documentation or a reasonable estimate of Sahyers' alleged damages prior to filing the lawsuit, judicial time and resources likely would not have been expended on unnecessary litigation. The opinion does not create a principle that an attorney must contact a law firm prior to filing a lawsuit against that law firm under the FLSA. Rather, the opinion stands for the principle that an attorney should not initiate unnecessary litigation and then deliberately prolong the litigation for the purpose of accruing attorney's fees. It is merely coincidental that the Respondents are a law firm and its attorneys; the conduct of Sahyers' attorney would have warranted the same result even if the Respondents were not a law firm and its attorneys. In the interests of judicial economy, a plaintiff's attorney should be expected to make a good faith attempt to settle small-value FLSA claims as expeditiously and cost-effectively as possible prior to bringing suit, regardless of whether the defendant is an attorney or a law firm.

CONCLUSION

Sahyers was not entitled to any award of attorney's fees or costs. Neither Sahyers nor her attorney made any efforts, such as pre-suit demands, to settle the case prior to filing suit, and they refused to provide the Respondents with any reasonable estimate of Sahyers' alleged damages. Instead, her attorney filed and pursued a lawsuit designed primarily to generate legal fees, a common practice under the FLSA, which the district court and the Eleventh Circuit properly refused to reward.

The Eleventh Circuit's opinion indicates clearly that the holding is limited to the specific and unique facts of this case and does not create any pre-suit notice requirements or different standards under the FLSA for lawyers suing lawyers. Nor does the opinion overstate the extent of a federal court's inherent authority to discipline attorneys who practice before it. Rather, the opinion makes clear that an award of attorney's fees and costs would be unjust under the special circumstances of this case because Sahyers' attorney could have disposed of this case with just a few telephone calls to the Respondents, but he chose instead to file suit and accumulate unnecessary attorney's fees.

For the foregoing reasons, the Eleventh Circuit did not err in its decision, and this Court should deny Sahyers' petition for a writ of certiorari.

Respectfully submitted,

THOMAS M. GONZALEZ
Counsel of Record
THOMPSON, SIZEMORE, GONZALEZ,
& HEARING, P.A.
201 North Franklin Street,
Suite 1600
Tampa, Florida 33602
(813) 273-0050
tgonzalez@tsghlaw.com

Counsel for Respondents